



UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID D. KONIECZYNSKI, ALAN J. DEXTRADEUR  
and WILLIAM L. ROHR

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Application No. 10/092,954

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on September 5, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

The Examiner's Answer mailed on April 21, 2006, stated under the Evidence Relied Upon section, page 3 that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that prior art was

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applied to the Rejections on appeal. See the Grounds of rejection on page 3 of the Examiner's Answer. The Manual of Patent Examining Procedure, (MPEP), in §1207.02 states:

(8) *Evidence Relied Upon*. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.

Before further review, the examiner must submit a corrected examiner's answer that will include the reference(s) under the "Evidence Relied Upon" heading.

Further, the content under the heading "SUMMARY OF CLAIMED SUBJECT MATTER" contained in the Supplemental Appeal Brief filed on March 29, 2006 does not provide a sufficient summary of the independent claims involved in the appeal, which, for each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of 37 C.F.R. § 41.37(c)(1)(vii), shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. *See* 37 CFR § 41.37(c)(1)(v).

Accordingly it is

**ORDERED** that the application is electronically returned to the Examiner:

1) to vacate the Examiner's Answer and issue a revised Examiner's Answer having the missing reference(s) listed under "Evidence Relied Upon" section;

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2) to have Appellant submit a revised Appeal Brief incorporating the required content as specified in 37 CFR § 41.37(c)(1)(v) "SUMMARY OF CLAIMED SUBJECT MATTER" section contained in the Appeal Brief filed on March 29, 2006; and

3) for such further action as may be appropriate.

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